

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Robert E. McMillan and
Mary K. McMillan,

Plaintiffs,

v.

ORDER

Civil No. 06-463 ADM/AJB

Charles Strother; Rachel A.
Schindeldecker; Mastermind Mortgage
Corporation, a Minnesota corporation;
and Ala Judeh, a/k/a A.J.,

Defendants.

Karl A. Oliver, Esq., The Oliver Group, PLC, St. Paul, MN, argued on behalf of Plaintiffs.

Jarvis C. Jones, Esq., Jones Satre & Weimer, Eagan, MN, appeared on behalf of Charles Strother, Mastermind Mortgage, and Ala Judeh.

Rachel A. Schindeldecker did not make an appearance.

The undersigned United States District Judge heard oral argument this morning on Plaintiffs Robert E. McMillan and Mary K. McMillan's ("Plaintiffs") Motion for Default Judgment [Docket No. 15] against Defendant Rachel A. Schindeldecker ("Schindeldecker"). Plaintiffs' Motion for Default Judgment is denied without prejudice because of insufficient service of process. Federal Rule of Civil Procedure 4(e) provides that:

[S]ervice upon an individual from whom a waiver has not been obtained and filed . . . may be effected . . .

(1) pursuant to the law of the state in which the district court is located, or in which service is effected . . .; or

(2) by delivering a copy of the summons and of the complaint to the individual personally or by leaving copies thereof at the individual's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein or by . . . [serving] an agent authorized by appointment or by law to receive service of process.

Plaintiffs, through their counsel, mailed a copy of the summons and complaint to Schindeldecker at her residence. Oliver Aff. [Docket No. 18] Ex. A. Federal Rule of Civil Procedure 4(d) provides that notification by mail is effective only if the defendant returns a waiver of service to the plaintiff. Plaintiffs have not provided any evidence that Schindeldecker waived service. Similarly, under Minnesota Rule of Civil Procedure 4.05, service by mail is effective only if an acknowledgment of service is received by the sender. Plaintiffs have not produced an acknowledgment of service from Schindeldecker. Therefore, Plaintiffs' Motion for Default Judgment against Schindeldecker must be denied because of insufficient service of process.

Based upon the foregoing, and all the files, records, and proceedings herein, **IT IS HEREBY ORDERED** that Plaintiffs' Motion for Default Judgment [Docket No. 15] against Defendant Rachel A. Schindeldecker is **DENIED WITHOUT PREJUDICE**.

BY THE COURT:

s/Ann D. Montgomery
ANN D. MONTGOMERY
U.S. DISTRICT JUDGE

Dated: November 13, 2007.